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No._____

In The

SUPREME COURT OF THE UNITED STATES

ZENNIE KING, pro-se

Petitioner(s)

v.

ENTERGY OPERATIONS, INC., EDWIN ROGERS, ET AL

Respondent(s)

On Petition For Writ of Certiorari

To The United States District Court of Appeals For the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Should a United States of America Citizen be granted a trial by jury and let a jury hear the evidence and testimony of over 100 witnesses to decide the outcome of a civil case involving retaliation, unequal pay and racial discrimination that occurred at Entergy Operations Inc.?

PARTIES TO PROCEEDING

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OPIONIONS BELOW

On January 9, 2004, Circuit Judges: Jolly, Jones, and Wiener, or the United States Court of Appeals for the Fifth Circuit denies the petitioner a trial by jury and is reprinted in the Appendix Page 17a – 18a, Case No 03-60530. Judge William Barbour opinion and order dismissing civil case number 5:01-CV-42BN with prejudice on page 1a – 14a., filed on May 13, 2003. Plaintiff filed for reconsideration on May 21, 2003 and was denied on July 7, 2003, opinion order on Page 15a – 16a.

JURISDICTION

EEOC charges were filed on August 3, 2000 against Entergy Operations Inc. and Edwin Roge[illegible], etal. A Notice of Right to Sue was granted on November 21, 2000.

Civil Case No. 5:01-CV-42BN was filed on February 20, 2001 pro-se. On June 5, 2001 the Plaintiff met with Attorney Philip C. Hearn who agreed to represent her, who then misrepresented the Plaintiff and failed to litigate this case in a timely manner. The Plaintiff had to proceed as pro-se with this case. The United States District Court for the Southern District of Mississippi Western Division dismissed this case with prejudices on May 13, 2003.

JURISDICTION CONTINUED

The United States Court of Appeals for the Fifth Circuit denies the Petitioner the constitutional right of a trial by jury on January 9, 2004. The Petitions notified the United States Supreme Court on January 25, 2004 to petition for a Writ of Certiorari. The petitioner pray that the writ of Certiorari is granted.

STATEMENT

This is clear case of retaliation, unequal pay and racial discrimination. The facts are: The Petitioner was employed in the Site Business Services Department for many years and was later moved to the Project Management Department that later closed. In 1998 the Petitioner complained to upper management and her Supervisors, Edwin Rogers and questioned why a white female, Donna Saunders, with no degree or former experience in the Site Business Service Department was being moved to the Site Business Services Department that was already allegedly overstaffed. When the Petitioner complained, she was allowed to move back to the Site Business Service Department along with Donna Sauders. However, the Petitioner was never accepted or treated fairly. The Petitioner was lead to believe by Edwin Rogers that she would be promoted to a Financial Analyst positions when one became available because the Petitioner was already performing the job but was not being equally paid under her

current Administrative job title. Edwin Rogers wrote this statement concerning promoting the Petitioner to Financial Analyst on the Petitioner 1998 Performance Appraisal and told the Petitioner that she would be promoted when a position became available.

The Petitioner applied in 1999 for the job of Finanicial Analyst in which she was already performing the duties and responsibilities under her Administrative Specialist Title and was denied a promotional opportunity by Entergy Operations and Edwin Rogers and etal. A black female, Mary Truitt, who has a lower educational degree and less experience in the area, was selected for the positions based on her answer to a question during a panel behavioral interview concerning taking company discounts. The Petitioner, Zennie King, who has a B.S. Degree in Business Administration from Alcorn State University, and now over 18

years of experience with the company, told Edwin Rogers during the interviews that she always tried to take company discounts and had saved the company over $100,000.00 in discounts. Edwin Rogers told the Petitioner that this answer was wrong and the company should not take discounts but should invest the money and make a return on there investment and that the Petitioner really had not saved the company any money. The Petitioner told Edwin Rogers that not paying their creditors was the reason why Entergy Operations was in the bad financial position they were in and the company would often pay projects as capital and then pay them as non-capital these were not ethical accounting practices. The Petitioner also mentioned during the interview a matter that Edwin Rogers thought was personal and should not have been brought up during the interview process. The Petitioner told the interview panel, which consisted of two co-workers, Tracy Boyd and Johnny Rockingham, that Edwin Rogers allowed her to move to the Site Business Services Department this made Edwin Rogers anger with

the Petitioner when she mentioned it during the interview. The Petitioner did not get the Financial Analyst position and went to Human Resources and Upper Management and complained. Waldron Mosby of the Human Resources Department told the Petitioner that three blacks interviewed and one white, another black got the job and he didn't see a problem.

The Petitioner complained about the behavioral panel interview being a conflict of interest, and the unfair evaluation by the panel. Edwin Rogers told the Petitioner that he made the final hiring decision. The Petitioner was forced to work in a hostile work environment after the interview with her co-workers that were created by her Supervisor, Edwin Rogers. The Petitioner has supplied the Respondents with hundreds of pages of written notes and documentation of the events that took places during this time frame. The Petitioner also gave sworn statement under oath in her deposition and provided a signed affidavit. The Petitioner was forced to give her deposition at Entergy Operations Inc., which

caused the Petitioner, much emotional stress and anxiety and health problems. The Respondents could not supply any notes or facts concerning these events only fabricated lies that were written after the Respondents obtained the Petitioner documentation. The facts in this case are a clear case of retaliation.

The Petitioner applied for another Financial Analyst position in 2000 and a white female, Anna Nicholson, was given the positions. The Petitioner was told by Edwin Rogers that Anna Nicholson had a degree in Accounting. The Petitioner later learned during the discovery process that Anna Nicholson degree was in Business Administration. The Petitioner has a degree in Business Administration, more experience with the company, more experience in the capital area, a higher grade point average and had to help train Anna Nicholson when she got the Analyst position in Site Business Service. The Petitioner was retaliated against when she once again went to Human Resources and complained to Jack Farren, James Cooley and Waltron Mosby about Edwin Rogers

retaliations and unfair treatment and discrimination against the Petitioner. The Petitioner also went the to Vice President of Entergy Operations Inc., Mr. William Eaton, and complained, of retaliation, unfair and unequal treatment and harassment by Edwin Rogers. The Petitioner also, wrote a letter the to the CEO of Entergy Operations Inc. Mr. Wayne Leonard concerning retaliation, unfair an unequal treatment, emotional distress, harassment and discrimination.

The Petitioner was moved out of the Site Business Services Department to the Matrix department to a non-permanent clerical job, while a white female Patricia Mangrum, who has no degree and less experience with the company was allowed to stayed in the Site Business Services Department as a full time employee with a permanent job. The Petitioner was not allow to take job related classes and denied training while other white employees were given the opportunity to take classes and obtain associated degrees while working in the department. The Respondent argues that the

Petitioner was in an overstaffed position and was moved to the Matrix just as other similar situated employees. However, the fact of the matter is that the Site Business Services Department lost employees due to Voluntary Separation Packages that in fact left the department understaffed and the Site Business Services Department has since hired other employees full-time after moving the Petitioner into the matrix.

The Petitioner was moved to the Scheduling Department to an exempt position where she worked in over a year and was told by her Supervisors, John Booth and Terri Carradine that she would be hired permanently in this position. The Petitioner was not hired for this position a white male was given this position over the Petitioner and the Petitioner had to help train this employee. The Petitioner was told that she did not have a job with Entergy Operations Inc., and needed to seek employment off-site elsewhere. The Petitioner received bad job Performance Appraisals and has written documentation stating that she did not

have a job and needed to leave Entergy. The Respondents argues that the Petitioner was never hurt by the move to the Matrix and received the same pay and had a permanent job. The facts are that the Petitioner was told in writing that she did not have a job; this caused the Petitioner emotional distress, heartache and anxiety that lead to many of the Petitioner medical problems. The Petitioner was forced under threats of termination to remain in a provoking meeting attempting to force psychiatric counseling upon Charlean McDonald. Edwin Rogers, Russell Sears and CathyEllaesser were present at this meeting. The Petitioner became very ll during this meeting and was not paid, and denied training opporunities and was told she would be fired if she did not return to class. The Petitioner was moved from desk to desk as floater because she did not have a permanent job. The Petitioner also applied for another Financial Analyst position in September 2000 and she did not even get an interview. The evidence shows all of the Financial Analyst positions that were posted and filled were all the sane positions.

REASON FOR GRANTING THE PETITION

The facts and evidence are all documented in black and white in this case by the Petitioner. This is truly a case of race discrimination, retaliation and harassment and emotional distress and unequal pay. The Petitioner has provided that necessary evidence and documentation that leap off the page and prove race discrimination, retaliation, harassment and emotional distress. The only evidence that the Respondent has provided is a affidavit signed by the a black man, James Cooley, the Human Resources Director stating race neutral reasons why Anna Nicholson was given the Financial Analyst position over the Petitioner. The fact of the matter is that James Cooley had nothing the do with hiring decision for the Financial Analyst positions or any other vacant position at Entergy Operations Inc. The Respondent clearly stated during the discovery process that it was the hiring manager Edwin Roger's decision to hire whom ever he wanted to hire. The Human Resources Director, James Cooley merely became involved with

this issue after the decision was made. Therefore, the affidavit that he signed is not worth the paper that it is written on. James Cooley was present at the meetings that took place with the Petitioner and Vice President Williams Eaton and told the Petitioner that he supported her when she complained about the harassment and retaliations and during the meeting with Mr. Eaton, in the meeting Mr. Cooley then supported Mr. Eaton. Mr. Cooley is on Entergy's payroll and had nothing to do with hiring for the Analyst positions therefore his signed affidavit should be inadmissible as evidence. The Respondents stated during the Petitioner depositions that the Respondent consulted with James Cooley often during this case. The Petitioner has noticed that each time a certain issue or circumstances concerning people or policies were mentioned in this litigation, Entergy Operations Inc., would always implement a new policy or change policies and move personnel that would justify unlawful actions by the company. For example, the Petitioner did not provide written consent for the Respondent to

obtain medical records, but the Respondent had already obtained these medical records along with random drug screening records from the Entergy Operations Inc. The Petitioner was then ordered by the court to provide all medical records to the Respondent. A short time after this was done, the company Entergy Operations Inc., changed their policy concerning obtaining medical records without the consent of the employees for litigation purposes. It always seems as though the company is a step ahead of the process. The Petitioner was placed under a protected order and could not talk about this case when the Respondent was allowed to converse with the company on a day-to-day basis under the attorney client law, however the Petitioner did not have attorney client privileges because she is pro-se and not an attorney. The Petitioner was not provided with adequate responses to relevant interrogatories questions, and the court allowed the Respondents to object to providing the Petitioner with any relevant interrogatory documentation that was critical to the case. The Petitioner needed

Performance Appraisals of other employees in the Site Business Services Department that proves the Petitioner preformed the same job as the other Financial Analyst. The Respondents argues that the Petitioner did not perform such duties. The Petitioner provided the Respondents with the names of over 100 witnesses that witnessed the discrimination at Entergy Operations Inc., and witnessed the harassment, and retaliation that took place against the Petitioner. Entergy Operations Inc. conducted interviews in 2003 with all Administrative Service employees with questions pertaining to race discriminations, harassment and retaliation on the job; many of these employees are listed as witnesses in this case. This is an action for $20 million for racial discrimination, compensatory damages, unequal pay, punitive damages; declaratory and equitable relief brought pursuant to 28 U.S.C. Section 1331, 1367, 2201 and 2002 and 42 U.S. C. Sections 1981, 1988, 2000 e. et seq. 12101, et. seq. See, Blow v City of San Antonio, Texas, 236 F. 3d 293, 299.....

The Respondent has no case and cannot prove a prima facie case and has only presented the court with legal frivolous unsupported legal allegations. The Petitioner is not an attorney and has not used her ignorance of the law as an excuse. The Petitioner has presented this petition in good faith and to the best of her knowledge. The Petitioner has been discriminated against and has proven her prima facie case. This case should have been allowed to go to court and be heard by a jury. The Petitioners has over 100 witnesses listed in this case who can testify to the racial discrimination and retilations that has occurred at Entergy Operations Inc. One of the witnesses, Charlean McDonald has already been terminated by Entergy Operations Inc., for trying to stand up for what is right, and the other witnesses are terrified that they may also be terminated. To not have a job in America today is just like a death sentence. The United States Supreme Court must help bring justice for us all.

CONCLUSION

The Petitioner did not receive due process under the law and her constitutional rights have been violated by not allowing this case to proceed to court to be heard by a jury. The Petitioners has evidence, over 100 witnesses and proof with sign affidavit that will prove this case beyond a shadow of a doubt. God has already proclaimed victory for the Petitioner in this case. The Petitioner pray that this case be allowed to proceed to court where a jury will also declare victory. Justice has been delayed long enough, justice must not be denied any longer. The Petitioner continues to suffer in silence, not knowing if she will have a job from day to day and be able to feed and provide for her children. The Petition for Writ of Certiorari should be granted.

Respectfully Submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

ZENNIE KING **PLAINTIFF**

VS.

CIVIL ACTION NO. 5:01-CV-42BN

ENTERGY OPERATIONS, INC., AND
EDWIN ROGERS **DEFENDANTS**

OPINION AND ORDER

This cause is before the Court on the Motion of Defendant Entergy Operations, Inc. (hereinafter " Entergy") and Defendant Edwin Rogers for Summary Judgment. Having considered the Motion for Summary Judgment, the Response, the Rebuttal, and all attachments to each, as well as supporting and opposing authority, the Court finds that the Motion is well taken and should be granted.

I. Background and Procedural History[1]

Plaintiff Zennie King, a black person, was hired by Entergy in 1985, soon after graduating from Alcorn State University with a bachelor's degree in business administration. She has worked at Entergy continuously from 1985 through the present. During the

[1] The facts stated in this section of the Opinion and Order were generated from numerous pleadings submitted by the parties. By including the facts herewith, the Court is not attesting to their accuracy or their truth.

time frame relevant to the claims in this suit, Defendant Edwin Rogers was Plaintiff's supervisor. While employed at Entergy, Plaintiff worked exclusively in clerical and administrative positions.

In 1999, Entergy implemented a corporate reorganization plan under which a total of forty-one Administrative Services employees, both black and white, were transferred into a system known as the Matrix Support Group (hereinafter "Matrix") .The Matrix employees rotated as needed to temporary positions within Entergy. When permanent positions opened in the reorganization process, the Matrix employees were offered the positions. On December 19,1999, Plaintiff was moved to a Matrix position from her clerical position in Site Business Services. Plaintiff's salary was not reduced as a result of her transfer to the Matrix.

During her placement as a Matrix employee, Plaintiff applied for two permanent positions with Entergy.[2] She was granted an interview for both positions, but other existing Entergy employees were awarded the jobs. As a result, Plaintiff filed the subject Complaint with this Court on February 20,2001. The claims alleged in the Complaint are:

[2]In her deposition, King refers to a third position to which she applied. However, because the Complaint makes no reference to the third position, it is not in issue in this case.

Count I -Section 1981- Promotion Claims
Count II -Section 1981- Disparate Pay / Salary Claims
Count III -Section 1981- Working Conditions Claim

Although none of the enumerated claims refer to Title VII, 42 U.S.C. § 2000e et seq, Plaintiff did refer to Title VII in the "Jurisdiction" section of the Complaint. Because Plaintiff is litigating this case pro se, the court will analyze her claims under both 28 U.S.C. § 1981 and 42 U.S.C. § 2000e et seq. See, Atchison v. Collins, 288 F.3d 177, 179 n.2 (5th Cir. 2002) (holding that the Court must liberally construe pleadings filed by pro se litigants) .

Defendants filed the subject Motion for Summary Judgment on April 18, 2003. The Motion is now ripe for consideration by the Court.

II. Summary Judgment Standard

Rule 56 of the Federal Rules of Civil Procedure provides, in relevant part, that summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c) .The United States Supreme Court has held that this

language "mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a sufficient showing to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S.317, 322 (1986); see also, Moore v. Mississippi Valley State Univ., 871 F.2d 545, 549 (5th Cir. 1989); Washington v. Armstrong World Indus., 839 F.2d 1121, 1122 (5th Cir. 1988).

The party moving for summary judgment bears the initial responsibility of informing the district court of the basis for its motion and identifying those portions of the record in the case which it believes demonstrate the absence of a genuine issue of material fact. Celotex, 477 U.S. at 323. The movant need not, however, support the motion with materials that negate the op-opponent's claim. Id. As to issues on which the non-moving party has the burden of proof at trial, the moving party need only point to portions of the record that demonstrate an absence of evidence to support the non-moving party's claim. Id. at 323-24. The non-moving party must then go beyond the pleadings and designate " specific facts showing that there is a genuine issue for trial." Id. at 324.

Summary judgment can be granted only if everything in the record demonstrates that no genuine issue of material fact exists. It is improper for the district court to "resolve factual disputes by weighing conflicting evidence, ...since it is the province of the jury to assess the probative value of the evidence." Kennett-Murray Corp. v. Bone, 622 F.2d 887, 892 (5th Cir. 1980). Summary judgment is also improper where the court merely believes it unlikely that the non-moving party will prevail at trial. National Screen Serv. Corp. v. Poster Exchange, Inc., 305 F.2d 647, 651 (5th Cir. 1962).

III. Analysis

The Court begins by noting that claims of discrimination under Title VII and claims of discrimination under § 1981 are subject to the same legal tests. Raggs v. Mississippi Power and Light Co., 278 F.3d 463, 468 (5th Cir. 2002). Therefore, the Court does not differentiate between Plaintiff's Title VII claims and her § 1981 claims in the following analysis.[3]

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[3]The Court notes that "relief under Title VII is available only against an employer, not an individual supervisor. ..." Foley v. Univ. of Houston Sys., 324 F.3d 310, 316 n.7 (5th Cir. 2003). Relief under § 1981 is available against both an employer and an individual supervisor. Id. Accordingly, Plaintiff's claims against Rogers in this cause of action are limited to claims under § 1981.

A. Failure to-Promote Claims

Generally, in cases involving employment discrimination, the Plaintiff has the initial burden of establishing a prima facie case of discrimination. See, Rhodes v. Guberson Oil Tools, 75 F.3d 989, 992 (5th Cir. 1996) (applying the analysis promulgated by the United States Supreme Court in Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 252-53 (1981) and McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973)). After the plaintiff establishes a prima facie case, the burden shifts to the employer "to proffer a legitimate, nondiscriminatory reason for the challenged employment action," which requires that the employer present evidence that, if believed by a jury, would lead to the conclusion that the employer did not act with discriminatory intent. Rhodes, 75 F.3d at 992-93. In the event the employer articulates a legitimate, non-discriminatory reason, the burden shifts back to the plaintiff to show that the reason proffered by the employer was in reality a pretext for discrimination. Id.

Under Title VII or § 1981, to establish a prima facie case of intentional discrimination based on failure to promote, Plaintiff must establish that: (1) she is a member of a protected group, (2) she was qualified for promotion, (3) she was denied promotion, and (4) a similarly qualified white individual was promoted in her

stead. Ward v. Bechtel Corp ., 102 F.3d 199, 202 (5th Cir. 1997) . These tests must be applied to each of the two promotions for which Plaintiff claims race discrimination.

The first promotion in question in this case was for the position of Financial Analyst, which was posted by Entergy on September 2, 1999. The person promoted to this position was black. As such, the fourth test set forth in Ward is not met, and Plaintiff's discriminatory failure to promote claim pertaining to the September 2, 1999, Financial Analyst position must fail.

The second promotion addressed by Plaintiff was also for a Financial Analyst position. This position was posted by Entergy on March 23, 2000. Plaintiff interviewed for the position, and Defendants admit that Plaintiff was within the qualified pool of candidates for the job. Anna Nicholson, a white person with a B.S. degree in business administration (major in accounting), was promoted to the position. See, Defendants' Motion for Summary Judgment, ¶ 5 of Exhibit "P," Affidavit of James Cooley. Based on these facts, the Court finds that Plaintiff proved her prima facie Case for the claim of discriminatory failure to promote pertaining to the Financial Analyst position posted on March 23, 2000. That is, Plaintiff is a member of a protected group who was qualified

for the position in question, and the position was filled by a white person with arguably similar qualifications.

With the establishment of a prima facie case for race discrimination in the promotion process relating to the March 23, 2000, job posting for Financial Analyst, the burden shifts to Entergy to articulate a legitimate, nondiscriminatory reason for its choice for the job. James E. Cooley, a black person who holds the position of Director of Human Resources at Entergy, provided a sworn affidavit that details the reasons of Entergy for promoting Nicholson, rather than Plaintiff, to the second Financial Analyst position. Cooley stated the following race-neutral reasons for awarding the position to Nicholson: (1) her college major was accounting, a field of academic study which was not pursued by Plaintiff; (2) she had four years of prior experience as an accountant at Entergy; and (3) she had prior experience performing financial analysis, including variance explanations, forecasting and budget development. See, Defendants' Motion for Summary Judgment, ¶ 5 of Exhibit " P," Affidavit of James Cooley. Plaintiff did not have the same level of experience in any of these endeavors. In paragraphs six through thirteen of his affidavit, Cooley listed numerous other race-neutral reasons for promoting Nicholson, rather than Plaintiff, to the Financial Analyst position. Id. at ¶¶ 6-13. The reasons stated by Cooley for promoting Nicholson are sufficient to shift the burden of proof back to Plaintiff to show that the reasons were a pretext for race discrimination.

As Entergy proffered legitimate, nondiscriminatory reasons for the employment action about which Plaintiff complains, Plaintiff must demonstrate that the reasons articulated by Entergy

were merely a pretext for discrimination. See, McDonnell Douglas, 411 u.s. at 802-04. The issue before the Court is, therefore, whether a rational finder of fact could find, based on the evidence in the record, that Plaintiff was discriminated against because of her race. See, St. Mary's Honor Ctr., 509 U.S. at 511. The United States Court of Appeals for the Fifth Circuit has found:

> 'A prima facie case and sufficient evidence to reject the employer's explanation' may permit a trier of fact to determine that an employer unlawfully discriminated, and may therefore be enough to prevent summary judgment. Reeves v. Sanderson Plumbing Prods., 530 U.S. 133, 148 (2000). This showing, however, is not always enough to prevent summary judgment in favor of the employer. For instance, an employer would be entitled to summary judgment 'if the plaintiff created only a weak issue of fact as to whether the employer's reason was untrue and there was abundant and uncontroverted independent evidence that no discrimination occurred.' Id. Whether summary judgment is appropriate in any particular case depends on a variety of factors, including 'the strength of the prima facie case, the probative value of the proof that the employer's explanation is false and any other evidence that supports the employer's case and that properly may be considered' Id. We have said that summary judgment is inappropriate 'if the evidence taken as a whole (1) creates a fact issue as to whether each of the employer's stated reasons was what actually motivated the employer and (2) creates a reasonable inference that [race] was a determinative factor in the actions of which the plaintiff complains.' Vadie v. Mississippi State Univ., 218 F.3d 365, 373 (5th Cir. 2000).

Pratt v. City of Houston, Tex., 247 F.3d 601, 606-07 (5th Cir. 2001).

Plaintiff's Response to Defendants' Motion for Summary Judgment is a scant one paragraph argument filled with conclusory allegations, and containing no affidavit testimony or admissible proof of any kind.[4] Plaintiff provided the Court with no proof that the stated reasons of Entergy for failing to promote her were a pretext for race discrimination. In fact, at the time that she filed this suit, Plaintiff was unaware of Nicholson's qualifications for the Financial Analyst position. See, Defendants' Motion for Summary Judgment, Exhibit "Q," Plaintiff's Deposition, p. 168. Plaintiff's subjective and unsupported beliefs that she was discriminated against in the promotion process are insufficient to overcome the race-neutral reasons of Entergy for its employment decision. See, Blow v. City of San Antonio, Texas, 236 F.3d 293, 299 (5th Cir. 2001) (citation omitted) (holding that subjective opinions regarding race discrimination are insufficient to create a fact issue on the issue of pretext). For this reason and for the reasons stated above, the Court finds that Defendants' Motion for Summary Judgment on the issue of discrimination in the promotion process is well taken and should be granted.

[4]The Court notes that Plaintiff submitted a Response and Objection to the Defendants' Rebuttal to Plaintiff's Reply to Defendants' Motion for Summary Judgment. Simply stated, Plaintiff submitted a Response to Defendants' Rebuttal. The Court will not consider the contents of this pleading because such is not allowed by either the Federal Rules of Civil Procedure or the Local Rules of this Court, and because Plaintiff did not move the court to file the pleading. However, even if the Court elected to consider the contents of this pleading, the analysis and conclusions presented herewith would be unaffected.

B. Disparate Pay / Salary Claims

Plaintiff provided the Court with no specifics regarding the basis for her disparate pay / salary claims. The Court assumes that the claims are related to the failure of Entergy to promote her to the positions described in the previous subsection of this Opinion and Order. Therefore, in accordance with the analysis and findings presented in Section III.A. of this Opinion and Order, the Court finds that Plaintiff's claims for disparate pay / salary should be dismissed.

C. Working Conditions Claim

Plaintiff's working conditions claim is based on her allegation that " [t]he Defendant, Entergy Operations, Inc., has discriminated against Plaintiff, Zennie King, in her working conditions by arbitrarily refusing to hire [her] for the position that she met all the requirements. ..." See, Complaint, ¶ 7. In accordance with the analysis and findings presented in Section III.A. of this Opinion and Order, the Court finds that Entergy did in fact articulate legitimate race-neutral reasons for its employment actions, which Plaintiff failed to effectively rebut. Therefore, Plaintiff's working conditions claim should be dismissed.

D. Retaliation Claim

Although not enumerated as a specific count in the Complaint, Plaintiff makes reference to a claim of retaliation against Defendants. See, Complaint, ¶ 6 (stating that Plaintiff was retaliated against based on the following: "After I had interviewed for the second Financial Analyst position, later that year I was transferred from the business management department, a permanent position, to the Matrix Department, a non-permanent

position."). In the recently decided case of Foley v. Univ. of Houston Sys., 324 F.3d 310, 316 (5th Cir. 2003) , the Fifth Circuit held that an employee has a cognizable claim if an employer takes retaliatory action in response to complaints of racial discrimination by an employee. However, to successfully assert such a claim, the employee must have been subjected to an "ultimate employment decision," Id. at 317 (citation omitted), which is synonymous with an " adverse employment action. " In Mota v. The Univ. of Texas Houston Health Science Ctr., 261 F.3d 512 (5th Cir. 2001), the Fifth Circuit set forth a definition for the phrase "adverse employment action. " The Court stated:

> "Adverse employment actions" include only "ultimate employment decisions. ..'such as hiring, granting leave, discharging, promoting, and compensating. ' " An employer's action does not rise to the level of an "adverse employment action" when it fails to have more than "mere tangential effect on a possible future ultimate employment decision." To demonstrate causation, the employee "must show that 'but for' the protected activity, the adverse employment action would not have occurred."

Id. at 519 (citations omitted). Actions "having mere tangential effect on a possible future ultimate employment decision" do not constitute adverse employment actions. Mattern v. Eastman Kodak Co, 104 F.3d 702, 708 (5th Cir. 1997).

Plaintiff's transfer to the Matrix Department did not constitute an adverse employment action under binding Fifth Circuit law because she continued to be a regular, full-time employee who was not subject to involuntary termination. See, Defendants' Motion for Summary Judgment, ¶ 2 of Exhibit "P," Affidavit of James Cooley. Also, Plaintiff's benefits were unaffected by the transfer, and she "continued to receive regular salary increases comparable to her peers. ..." Id. at ¶ 3. Under these uncontroverted facts, Plaintiff's retaliation claim must be dismissed.

IV. Conclusion

Plaintiff has failed to convince the Court that any of her claims present genuine issues of material fact which would preclude summary judgment. For this reason, and supported by the analysis contained herewith, Defendants' Motion for Summary Judgment should be granted.

IT IS THEREFORE ORDERED that the Motion of Defendants for Summary Judgment [71-1] is hereby granted.

IT IS FURTHER ORDERED that this case is hereby dismissed with prejudice. A Final Judgment in accordance with Rule 58 of the Federal Rules of Civil Procedure shall be entered this day. SO ORDERED this the 13th day of May, 2003.

William Barbour
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT BY OEPUTY
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

ZENNIE KING **PLAINTIFF**

VS. **CIVIL ACTION NO. 5:01-CV-42BN**

ENTERGY OPERATIONS, INC., AND
EDWIN ROGERS **DEFENDANTS**

FINAL JUDGMENT

In accordance with the Opinion and Order entered this day granting the Motion of Defendants for Summary Judgment, this cause is hereby dismissed with prejudice.

SO ORDERED this the 13th day of May, 2003.

William Barbour
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT BY OEPUTY
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

ZENNIE KING **PLAINTIFF**

VS. **CIVIL ACTION NO. 5:01-CV-42BN**

ENTERGY OPERATIONS, INC ., AND
EDWIN ROGERS **DEFENDANTS**

OPINION AND ORDER

This cause is before the Court on Plaintiff's Motion for Reconsideration. Having considered the Motion, Response and all, attachments to each, as well as supporting and opposing authority, the Court finds that the Motion is not well taken and that it should be denied.

In an Opinion and Order entered with the Clerk of the Court on May 13, 2003, the Court granted Defendants' Motion for summary Judgment. A Final Judgment was entered on the same day, dismissing the case with prejudice. Aggrieved by the dismissal of the case. Plaintiff filed the subject Motion for Reconsideration on May 27, 2003. The Motion for Reconsideration is now ripe for consideration by the Court.

Under Rule 59(e) of the Federal Rules of Civil Procedure, "(t)he court... recognizes only three possible grounds for any motion for reconsideration: (1) an intervening change in

controlling law, (2) the availability of new evidence not previously available" and {3) the need to correct a clear error of law or prevent a manifest injustice." Atkins .v. Marathon Le Torneau Co., 130 F.R.D. 625, 626 (S .D. Miss, 1990) (citing NRDC', v. " EPA, 705 F. Supp. 698, 702 (D.D.C. 1989), vacated on other grounds by 707 F. Supp. 3 (D.D.C. 1989)). See also Russ v. International Paper Co., 943 F. 2d 589, 593 (5th Cir. 1991), cert. denied, 503 U.S. 987 (1992); F.D.I.C. v. Cage, 810 F. Supp. 745, 747 (S.D. Miss 1993). Litigants considering a Rule 59(e) motion have been "strongly cautioned" to carefully consider the three grounds for such a motion. Atkins, 130 F.R.D. at 626 , n.1. "Whatever may be the purpose of Rule 59 (e), it should not be supposed that it is intended to give an unhappy litigant one additional chance to sway the judge." Id. (citing Durkin v. Taylor, 444 F. Supp. 879, 889 (E.D Va. 1977)).

Regarding the instant Motion for Reconsideration, Plaintiff has failed to establish any of the three grounds for reconsideration. There has been no intervening change of law. Plaintiff has produced no evidence that was previously unavailable to her or that was not previously produced and considered by the Court. Nor has Plaintiff persuaded the Court that it made a clear error of law that would result in manifest injustice. The court therefore finds that the Motion for Reconsideration is not well taken and should be denied.

IT IS THREFORE ORDERED that the Plaintiff's Motion for Reconsideration (77-1) is hereby denied.

SO ORDERED this the 7th day of July 2003.

William Barbour
UNITED STATED DISTRICT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No.03-60530 Clerk
Summary Calendar

ZENNIE KING,

Plaintiff -Appellant,

Versus

ENTERGY OPERATIONS, INC. EDWIN ROGERS,
Defendants –Appellees

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 5:01-CV-42-BN

Before JOLLY, JONES, and WIENER, Circuit Judges.
PER CURIAM:*

Zennie King, pro-se, appeals the summary judgment dismissing her discrimination claims against Entergy Operations, Inc. and Edwin Rogers. She argues that she established a prima facie case of discrimination and that she was denied due process of law when the district court granted summary judgment and denied her a jury trial. King's argument is without merit. It is well-settled that "[n]o constitutional right to a trial exists when after notice and a reasonable opportunity a party fails to make the rule-required demonstration that some dispute of material fact exist which a

*Pursuant to 5th Cir. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

trial could resolve. " Oglesby v. Terminal Transport Co., 543 F.2d 1111, 1113 (5th Cir. 1976) (rejecting contention that entry of summary judgment violated Seventh Amendment right to jury trial and Fifth Amendment right not to be deprived of property without due process of law). As the district court explained in its thorough, well-reasoned opinion, King failed to demonstrate the existence of a genuine issue of material fact. We therefore AFFIRM the summary judgment, essentially for the reason stated by the district court.

King's motion for a default judgment in the amount of $20 million, because she has not received a copy of an order signed by a judge granting an extension of time for the appellees to file their brief is patently frivolous and is DENIED. The appellees' motion for an award of attorney's fees for having to respond to King's frivolous motion is DENIED, but King is warned that future frivolous filings will result in the imposition of sanctions against her.

AFFIRMED; MOTIONS DENIED; SANCTIONS WARNING ISSUED.